

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1912.

No. 2454.

947

J. A. WHITFIELD, APPELLANT,

vs.

AUGUSTUS W. CRITTENDEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 28, 1912.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2454.

J. A. WHITFIELD, Appellant,
vs.
AUGUSTUS W. CRITTENDEN.

a Supreme Court of the District of Columbia.

At Law. No. 58611.

AUGUSTUS W. CRITTENDEN, Plaintiff,
vs.
J. A. WHITFIELD, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be It Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

1 *Complaint.*

Filed June 3, 1912.

In the Municipal Court of the District of Columbia, No. 315 John Marshall Place.

Filed May 6, 1912.

No. L. & T. 58611.

AUGUSTUS W. CRITTENDEN, Plaintiff,
vs.
J. A. WHITFIELD, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainant Augustus W. Crittenden being first duly sworn according to law, states that he is entitled to the possession of the premises Numbered 3823 Woodley Road N. W. located in

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the District of Columbia, and that the same is unlawfully detained from him and held without right by the defendant J. A. Whitfield to whom the complainant had heretofore rented the said premises as a monthly tenant and whose tenancy and estate has been determined by default in the payment of rent, as provided in the agreement under which said tenancy was established. Complainant therefore prays that a Summons be issued commanding the defendant to appear and show cause why judgment should not be given against defendant for the restitution of the possession of said premises, Numbered 3823 Woodley Road, N. W., and costs of this suit.

AUGUSTUS W. CRITTENDEN.

Subscribed and sworn to before me this 6 day of May A. D. 1912.

LOUIS A. ROSAFY, [SEAL.]
Notary Public D. C.

Memoranda.

May 16, 1912.—Judgment of Municipal Court for Plaintiff for possession & costs.

May 23, 1912.—Undertaking on appeal approved and filed.

3

Affidavit of Plaintiff under Rule 19.

Filed June 11, 1912.

In the Supreme Court of the District of Columbia.

At Law. No. 54704.

AUGUSTUS W. CRITTENDEN, Plaintiff, Appellee,
vs.

J. A. WHITFIELD, Defendant, Appellant.

DISTRICT OF COLUMBIA, ss:

Augustus W. Crittenden, being duly sworn according to law, deposes and says that he is the plaintiff in the above entitled cause; that he is the owner of and entitled to the possession of the premises known as 3823 Woodley Road, N. W., Washington, D. C.; that the same is unlawfully detained from him and held without right by the defendant, J. A. Whitfield; that Moore & Hill (Inc.), a corporation of the District of Columbia, leased the said premises to the said defendant for the term of one year from the 15th day of August, A. D. 1911, under a written agreement of lease bearing date of August 23rd, 1911; that the said agreement and the tenancy thereby created were expressly made subject to be terminated and determined upon certain conditions in the said agreement

4 or lease fully set forth, and particularly upon the condition that in the event the defendant should fail to pay any one of the monthly instalments of rent in advance, when and as the same should become due and payable, then it should be lawful for the lessor to reenter and recover possession of said premises by means of a seven days' summons under the provisions of the Code of Laws for the District of Columbia, regulating proceedings between landlords and tenants, the defendant expressly waiving all right to a thirty days' or other notice to quit should the lessor elect to proceed to recover possession as aforesaid.

And plaintiff, further on oath, says that for value received Moore & Hill (Inc.), a corporation, did on December 5, 1911, transfer, assign and set over unto Augustus W. Crittenden, plaintiff, all their right, title and interest in said agreement, and all benefit and advantage to be derived therefrom; that defendant was fully advised of said assignment, and thereafter did pay unto the plaintiff, until March 15th, 1912, the monthly instalments due under the terms of the aforesaid agreement or lease.

And plaintiff, further on oath, says that the aforesaid agreement or lease, and assignment are in words and figures as follows:

"This Agreement, Made this 23rd day of August in the year 1911, by and between Moore & Hill, (Inc.) a corporation, of the District of Columbia, party of the first part, and J. A. Whitfield, party of the second part,

5 Witnesseth, That the said party of the first part has let and leased, and does hereby let and lease unto the said party of the second part his executors and administrators, all that certain dwelling, messuage, tenement and premises situate in the City of Washington, District of Columbia, and known as dwelling No. 3823 Woodley Road, N. W., for the term of One year commencing on the 15th day of August, 1911, to be fully completed and ending on the 15th day of August, 1912, at and for the total rent of six hundred no/100 dollars, payable at the office of Moore & Hill (Inc.), or assigns, in equal monthly instalments of Fifty dollars, payable on the 15th day of each and every month in advance, the first payment of Fifty dollars to be made on or before the 23rd day of August, 1911.

And the said party of the second part, for his heirs, executors, administrators, does hereby covenant to and with the said party of the first part that he the said party of the second part shall and will during the said term pay unto the said party of the first part the rent hereby reserved in the manner hereinbefore mentioned without any deduction whatsoever, and without any obligation on the part of the said party of the first part to make any demand for the same, and further that he will not use said premises for any unlawful purpose, but will occupy the same as a dwelling and will

6 not sub-let nor assign the said premises, or any part thereof, nor transfer possession thereof to any person or persons, nor carry on any business therein without the written consent of the said party of the first part first had and obtained, and further that he the said party of the second part will pay the water rent and gas bills as the same may respectively become due and chargeable

against the said premises during the term aforesaid. And further, that no gasoline will be kept or allowed on said premises, and will at the end of the said term deliver up the said premises in the like good order in which they are now, ordinary wear and tear and casualties by fire only excepted, to the said party of the first part, who shall and may thereupon re-enter, provided that if at least ten days before the expiration of the term aforesaid, the said party of the first part shall either leave on the premises aforesaid, or serve on the lessee aforesaid, a notice in writing that said premises will be required at the end of said term, then in the happening of either of said events, the said party of the first part may without further notice, immediately re-enter and possess said premises; but in the event that said party of the first part shall not give said notice as aforesaid, then unless the tenant shall immediately surrender said premises on the day of the end of said term, the said tenant shall by virtue of this agreement become a tenant by the month, at the

7 rental per month of the monthly instalments of rent to be paid as aforesaid on the yearly tenancy, commencing said monthly tenancy with the first day next after the end of said term; which said monthly tenant shall be subject to all conditions and covenants of the said lease as though the same had originally been a monthly instead of a yearly tenancy, and shall give to the said party of the first part at least thirty days' notice of any intention to remove from said premises, and the said tenant by the month shall not be entitled to any notice to quit in the event said rent is not paid in advance without demand, the usual thirty days' notice being hereby expressly waived.

And the said party of the second part further covenants and agrees that if during the continuance of said yearly tenancy, or if after the commencement of said monthly tenancy, if any arise as aforesaid, he shall fail to pay any one of said monthly instalments of rent reserved as aforesaid when and as the same shall respectively become due and payable, although no demand may have been made for the same, or if he shall in any other manner or respect fail to keep, or violate any one of the covenants and agreements hereinbefore made by the said party of the second part, then it shall be lawful for the said party of the first part at its election and option, to re-enter and recover possession of said premises by means of a seven days' summons under the provisions of the Code of Laws for the District of Columbia, regulating proceedings between

8 landlords and tenants, or by such other legal process as may at that time be in operation in like case, the said party of the second part hereby expressly waiving all right to a thirty days' or other notice to quit should the said party of the first part elect to proceed to recover possession as aforesaid. Owner agrees to lay cement walk from front to rear and from rear steps to basement within sixty days from date of this lease.

And it is further provided, That if under the provisions of this lease and agreement a seven days' summons shall be served, and a compromise or settlement shall be made, either before or after judgment, whereby the said party of the second part shall be allowed

to retain said premises such proceedings shall not constitute a waiver of any covenant herein contained or the lease itself, or of the monthly tenancy if that be in force at such time or times; and it is further understood and agreed that the covenants and agreements contained in the within agreement to be performed by the respective parties are binding on the said parties and their legal representatives, and that no waiver of any breach of any covenant herein shall be construed to be a waiver of the covenant itself or of any subsequent breach thereof.

In Testimony Whereof, The respective parties hereto have here-
unto set their hands and seals the day and year first herein-
9 before written.

Signed, sealed and delivered in the presence of—

[Seal Moore & Hill, Incorporated.]

MOORE & HILL, INCORPORATED,
By W. A. HILL, *President*.
J. A. WHITFIELD. [SEAL.]

Approved,
A. W. CRITTENDEN.”

“For value Received, We hereby transfer, assign and set over unto Augustus W. Crittenden—assigns, all our right, title and interest in this agreement, and all benefit and advantage to be derived therefrom.

Witness our hands and seals this 5th day of December, 1911.

MOORE & HILL, INCORPORATED, [SEAL.]
By W. A. HILL, *President*.”

Witness:
C. M. STOY.

And plaintiff further on oath says that the defendant did fail and refuse to pay him, the plaintiff, the monthly instalment of rent, to wit, Fifty dollars (\$50.00) which was due and payable on April 15th, 1912, and that defendant has not paid the same, nor has he paid any rent for said premises since March 15th, 1912, which payment when so paid was for the use and occupation of said premises for the month ending April 15th, 1912.

10 And plaintiff, further on oath, says that under and by virtue of the terms of the lease hereinabove set forth,—when defendant failed and refused to pay the instalment of rent due on April 15th, 1912,—he, plaintiff, did, on May 6, 1912, file his Complaint in landlord and tenant proceedings in the Municipal Court of the District of Columbia, and a seven days' summons was issued and served upon defendant for that cause; that on May 16, 1912, the case was called for trial in said Court, and upon being heard a finding was made in favor of plaintiff by Justice Luke C. Strider, and said Justice rendered judgment in favor of plaintiff for possession of said premises and property, from which judgment defendant has appealed to this Court.

And plaintiff further on oath says that defendant's appeal to

this Court is made for purpose of delaying and vexing plaintiff, and is prosecuted in spirit of revenge and spite to cause delay, vexation and loss to plaintiff.

And plaintiff, further on oath says, that he is entitled to the sum of Fifty dollars (\$50.00) per month as rent for each monthly period beginning with April 15, 1912, for the use and occupation by defendant of said above mentioned property, as per the terms of the agreement or lease above set forth.

And plaintiff, further on oath, says that he is damaged by defendant remaining in possession of said premises, because plaintiff, if he recovers the premises at once and without delay, can lease the same for a term of one or more years to a desirable and reliable tenant, but that if defendant retains possession of said premises for a protracted period as he is seeking to do by means of this appeal, it will defeat plaintiff from securing this satisfactory tenant for said property.

And plaintiff, further on oath says that by reason of the premises the defendant's tenancy and estate in said premises have been determined, terminated, and have expired and that the plaintiff is therefore entitled to judgment for possession, affirming the judgment of the Municipal Court which has already been rendered in his favor, or of the dismissal forthwith of the appeal in this case at the cost of the defendant.

AUGUSTUS W. CRITTENDEN.

Subscribed and sworn to before me this 11th day of June, A. D. 1912.

[SEAL.]

J. D. YOAKLEY.
Notary Public for D. C.

Service accepted this 11th day of June, A. D. 1912.

FRANK J. HOGAN,
Attorney for Defendant.

(Endorsed:) Leave to file without prejudice to motion to dismiss or affirm.

JOB BARNARD, *Justice.*

12

Affidavit of Defense.

Filed June 21, 1912.

* * * * *

J. A. Whitfield, being first duly sworn, deposes and says that he is the defendant in this cause, and that he denies the right of the plaintiff to the possession of the property in question, the grounds of his defense being as follows:

With the possible exception of the payment of \$50. on or before August 23, 1911, the date of the one year lease set out in the plaintiff's affidavit, the defendant has always paid the reserved rent

(usually by check) after the due date thereof, and the same has always been received and accepted by the plaintiff without any objection whatever on the ground that it was paid out of date; the rent due in advance September 15, 1911, was paid September 27, 1911; the instalments of rent due in advance from October 15, 1911, to January 15, 1912, were adjusted and settled in one payment on account of certain repairs and allowances which the plaintiff made; the rent due in advance January 15, 1912, was paid January 30, 1912; the rent due in advance February 15, 1912, was paid March 4, 1912; and the rent due in advance March 15, 1912, was paid March 25, 1912; and all of the foregoing payments were made by affiant in good faith and received and accepted by the plaintiff without complaint or any notice whatever that payment ad
13 diem would be insisted on by him.

Affiant further says that the plaintiff's statement in his affidavit herein that the defendant failed and refused to pay the plaintiff the \$50. rent in advance due April 15, 1912, is false; on May 4, 1912, affiant sent plaintiff affiant's check of that date, No. 1401, on The Commercial National Bank, of this City, for fifty dollars (\$50), payable to the plaintiff's order; on May 6, 1912, plaintiff instituted this proceeding in the municipal court; and on May 7, 1912, plaintiff returned affiant's said check by mail, with no message whatever; that affiant's said check was in the same form as his prior checks for rent sent plaintiff, and was perfectly good and valid and would have been instantly paid on presentation to the said bank, and showed on its face that it was for rent "to May 15, 1912."

Affiant further says that he has never failed or refused to pay the reserved rent for the property in question, and always has held himself ready and willing to pay the same, and now here again tenders the same from April 15, 1912, to the terminal date of his said one year lease, namely, August 15, 1912; affiant is and always has been amply able to pay the said rent, and of this fact the plaintiff is well aware; the plaintiff also well knew that a demand for said rent without suit would have been entirely effective; and the plaintiff also knew that affiant did not know that absolute punctuality of payment was expected of him and would be insisted on, but, on
14 the contrary, that affiant relied upon the custom of paying

said rent out of the exact due date thereof; the said rent was affixed by said lease in solido at \$600. per annum, and the forfeiture provisions thereof were inserted merely as security for said rent, and were so understood by the plaintiff and defendant, yet the plaintiff is seeking by this proceeding to use said provisions to get possession of said property and not to get the said rent; the plaintiff is attempting by this proceeding to take undue and fraudulent advantage of the defendant's payment of said instalment of advance rent due April 15, 1912, after the due date thereof, although the said payment was made under a custom in which the plaintiff acquiesced, whereby the defendant was permitted to pay the several instalments of reserved rent after the respective due dates thereof, as hereinbefore set forth.

Affiant further says that at no time whatever prior to this suit

did the plaintiff ever give him the slightest notice of any kind that payment on the due date would be insisted on.

And further affiant saith not.

J. A. WHITFIELD.

Subscribed and sworn to before me this 21st day of June, 1912.

[SEAL.]

BESSIE B. SHEEHY,
Notary Public, D. C.

Motion for Judgment.

Filed July 1, 1912.

* * * * *

15 Now comes the plaintiff, and moves the Court to enter judgment for the plaintiff in the above entitled cause, for want of a sufficient affidavit of defense under Rule No. 19.

W. L. HOUSTON,
Attorney for Plaintiff.

To Frank J. Hogan, Esq., Attorney for Defendant.

Please take notice that the foregoing and annexed motion will be called to the attention of the Court, for its action on Friday, the 5th day of July, A. D. 1912, at 10 o'clock, a. m., or as soon thereafter as counsel can be heard.

W. L. HOUSTON,
Attorney for Plaintiff.

Service accepted this 1st day of July, A. D. 1912.

BAKER, SHEEHY & HOGAN,
Attorneys for Defendant.

Supreme Court of the District of Columbia.

MONDAY, *July* 15, 1912.

Session resumed pursuant to adjournment, Mr. Justice Anderson presiding.

* * * * *

16 Upon consideration of the plaintiff's motion filed herein for judgment for want of a sufficient affidavit of defense, it is considered that said motion be, and it is hereby granted.

Therefore, it is considered that the plaintiff herein recover against the defendant herein possession of the premises Numbered 3823 Woodley Road, North West, located in the District of Columbia; and, further, that the plaintiff recover against the defendant and Southwestern Surety Insurance Company his Surety, his costs of suit, to be taxed by the Clerk, and have execution thereof.

It is further ordered that a jury of inquisition be empanelled to ascertain the intervening damages to the plaintiff and compensation for the use and occupation of said premises from the date of the judgment appealed from.

Exceptions & Appeal.

Filed July 16, 1912.

* * * * *

The defendant notes an exception to the ruling of the court in giving judgment for possession to the plaintiff and in awarding him an inquisition for intervening damages and for use and occupation.

Defendant also notes an appeal to the Court of Appeals of the District of Columbia this 16th day of July, 1912, and the Court fixes the appeal bond at \$1000.00 to act as a supersedeas.

THOS. H. ANDERSON, *Justice.*

17

Memorandum.

July 16, 1912—Appeal bond approved and filed.

Assignment of Errors.

Filed July 16, 1912.

* * * * *

Comes here now the defendant J. A. Whitfield and excepts to the rulings of the court herein, and assigns thereto the following errors:

1. The court erred in holding insufficient the defendant's affidavit of defense.
2. The court erred in entering judgment for possession in favor of the plaintiff.
3. The court erred in awarding the plaintiff an inquisition.
4. The court erred in other respects apparent of record.

BAKER & HOGAN,
Attorneys for Defendant.

18

Designation for Transcript.

Filed August 7, 1912.

* * * * *

The Clerk will please prepare the transcript of record on the appeal in this cause, and include therein the following:

1. Complaint.
2. Memorandum of judgment of Municipal Court.

3. Memorandum of taking and perfecting appeal.
4. Plaintiff's affidavit under Rule 19.
5. Affidavit of defense.
6. Motion for judgment.
7. Judgment.
8. Assignment of Errors.
9. Order fixing bond, etc.
10. Memorandum of approval and filing of bond.
11. This *præcipe*.

BAKER & HOGAN,
Attorneys for Defendant.

August 6th, 1912.

19 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 18, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 58611 at Law, wherein Augustus W. Crittenden is Plaintiff and J. A. Whitfield is Defendant, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23rd day of August, 1912.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF. BUHRMAN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2454. J. A. Whitfield, appellant, vs. Augustus W. Crittenden. Court of Appeals, District of Columbia. Filed August 23, 1912. Henry W. Hodges, clerk.

